HONOURABLE SRI JUSTICE N.V. RAMANA

WRIT PETITION No.5329 OF 2001

DATE: 26-04-2006

Between:

The Depot Manager, A.P.S.R.T.C.,

Jagtial Depot, Jagtial, Karimnagar District

& another .. Petitioners

AND

The Labour Court

Rep. by its Presiding Officer, Godavarikhani

& another .. Respondents

HONOURABLE SRI JUSTICE N.V. RAMANA

WRIT PETITION No.5329 OF 2001

ORDER:

This writ petition has been filed by the petitioner-Depot Manager, Jagityal Depot, A.P.S.R.T.C., Karimnagar District seeking to quash the award passed by the Labour Court, Godavarikhani-1st respondent in I.D. No.140 of 1996 dated 07-08-2000.

The case of the petitioner is that the 2nd respondent-workman was working as Driver in A.P.S.R.T.C. and was attached to Jagityal Depot of Karimnagar District. On 13-04-1994 at about 20-00 hours, the 2nd respondent, while conducing duty on route Hyderabad to Jagityal, drove the bus bearing No.AP9Z -

3603 in a rash and negligent manner, and at Timmareddipalli, near Siddipet, due to lack of anticipation collided with another bus bearing No.AP9Z – 6457 of SRCL Depot, which was coming from the opposite direction, as a result of which three passengers died, some of the passengers of both the buses got injured and both buses were damaged extensively. A charge sheet dated 22-06-1994 was issued to the 2nd respondent and as the explanation submitted by him was not satisfactory, a domestic enquiry was conducted in accordance with the Regulations. Based on the enquiry officer's report dated

04-08-1994, wherein he held that the charges framed against the 2nd respondent were proved beyond reasonable doubt, the petitioner issued a notice dated 26-08-1994 to the 2nd respondent calling for explanation as to why he should not be removed from service for his misconduct. The 2nd respondent though received the notice, did not chose to submit his explanation, hence he was removed from service by proceedings dated 24-09-1994. The appeal preferred by the 2nd respondent was also rejected by the Senior Manager (O), Karimnagar, vide proceedings dated

13-03-1995. Aggrieved by the same, the 2nd respondent raised an industrial dispute before the Labour Court in I.D. No.140 of 1996, and it is the contention of the petitioner that the Labour Court without properly appreciating the evidence, in the facts and circumstances of the case, erroneously held that the 2nd respondent cannot be held responsible for the accident since the other bus bearing No.AP9Z - 6457, which was involved in the accident, was driven by an unauthorized driver, and accordingly directed the petitioner to reinstate the 2nd respondent into service with back wages and continuity of service. It is this order of the Labour Court, which is assailed in this writ petition contending that the same is vitiated by error apparent on the face of the record.

The 2nd respondent filed a counter affidavit denying the averments made in the affidavit filed in support of the writ petition and supported the impugned award. The main defence of the 2nd respondent is that the driver of the bus bearing No. AP9Z - 6457 was not an employee of the A.P.S.R.T.C. and he was an unauthorized driver, and at the time of accident, he was driving the bus, and he alone was responsible for the accident, and the same is evident from Ex.M-2, accident message, and contending so, he prayed that the writ petition be dismissed

Heard the learned counsel for the petitioners and the learned counsel for the 2nd respondent and perused the material available on record, including the impugned award.

Learned counsel for the petitioners contends that the preliminary report clearly shows that though there was lack of anticipation on the part of the driver of the bus bearing No. AP9Z – 6457, there was negligence on the part of the 2nd respondent also. He contends that the Labour Court having held that in a case of head on collision responsibility cannot be fixed on any one driver of the bus involved in the accident, committed an error in fixing responsibility on the driver of the opposite bus stating that it was driving by an unauthorized driver, which finding is

based on mere surmises, and prayed that award of the Labour Court directing reinstatement of the 2nd respondent into service with back wages and continuity of service, be quashed and set aside.

Learned counsel for the 2nd respondent contends that the petitioner through out his service worked without any remark, and the misconduct alleged against the petitioner is erroneous. He contends that the Labour Court based on correct appreciation of facts and evidence on record, rightly passed the award impugned, and there is no infirmity or illegality warranting interference of this Court. Hence, he prays to dismiss the writ petition.

Though the contents of Ex.M-2, accident message, shows that the person who drove the bus bearing No.AP9Z – 6457, at the time of the accident, died on the spot, the fact remains the driver by name Sri P. Devaiah, is alive. Thereby, indicating that the bus was either driven by another person or the actual driver after the accident absconded. Merely because the actual driver of the bus is alive, it cannot be said that the bus was driven by another person, and more so when it can also be inferred that the actual driver after the accident must have absconded. The accident being the result of head on collision of two buses, the Labour Court though held that responsibility cannot be fixed only on one driver, committed an error in holding that the accident might not have occurred due to rash and negligent driving of respondent No.2, and more so when the enquiry report as well as the joint accident enquiry committee report, reported that both the drivers are responsible for the accident. In that view of the matter, the finding of the Labour Court that the accident might not have occurred due to rash and negligent driving of the 2nd respondent, is set aside

In view of the contributory negligence of the 2nd respondent, the matter has to be remanded to the Labour Court for awarding of appropriate punishment, but both the learned Standing Counsel for the petitioner as well as the 2nd respondent submitted that instead of remanding the matter to the Labour Court, this Court itself modify the award of the Labour Court treating one as denying backwages to the 2nd respondent. In view of the agreed stand taken by the counsel, I deem it appropriate to dispose of the writ petition with the following directions:

The award of the Labour Court is modified to read that the petitioner shall reinstate the 2nd respondent with continuity of service, but without backwages. No costs.

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N.V. RAMANA, J

Date: **26th April, 2006**.

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